

REMARKS

In conjunction with the RCE filed herewith, Applicants have amended claims 1 and 42 to incorporate language discussed with the Examiner during a recent interview. Claims 1-80 are pending.

Claims 4-6, 12-14, 16, 18, 20, 25, 35, 44-46, 52-54, 56, 58, 60, and 65 were previously withdrawn from consideration as being allegedly drawn to a non-elected species. Pending claims 1-3, 7-11, 15, 17, 19, 21-24, 26-34, 36-43, 47-51, 55, 57, 59, 61-64, and 66-80 are still readable on the previously elected species.

As an initial matter, Applicant wishes to thank the Examiner for the courtesy extended to Applicant's attorney during the interview on February 20, 2008. Prior to the interview, Applicant's attorney provided the Examiner with proposed amendments to claims 1 and 42. (The amendments discussed during the interview are identical to the amendments to claims 1 and 42 included in this reply in the Amendment to Claims section.) During the interview, the claim amendment proposal was discussed and Applicant's attorney presented remarks consistent with those set forth below, explaining why these amended claims are allowable over the references cited in the final Office Action.

35 U.S.C. § 102(b) Rejections

In the final Office Action, claims 1-3, 7-9, 15, 17, 22-24, 26, 39, 42, 43, 47-49, 55, 57, 62-64, 66, and 78 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,195,546 to Cansler et al. ("Cansler '546"). Also, claims 1-3, 7-9, 15, 17, 22, 23, 26-28, 37, 39, 41-43, 47-49, 55, 57, 62, 63, 66-68, 76, 78, and 80 were

rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,161,555 to Cansler et al. ("Cansler '555").¹ Applicant respectfully traverses these rejections.

Each of independent claims 1 and 42 is directed to an applicator for applying a cosmetic product. Claim 1, as amended, recites an applicator including, among other things, "a plurality of applicator elements, . . . wherein a first periodic pattern repeats regularly along a first applicator element of the plurality of applicator elements and a second periodic pattern repeats regularly along a second application element of the plurality of applicator elements, the first periodic pattern being different from the second periodic pattern." Similarly, claim 42, as amended, recites an applicator including, among other things, "a plurality of bristles, . . . wherein a first periodic pattern repeats regularly along a first bristle of the plurality of bristles and a second periodic pattern repeats regularly along a second bristle of the plurality of bristles, the first periodic pattern being different from the second periodic pattern." As discussed during the interview and explained below, Cansler '546 and Cansler '555 do not teach, or otherwise suggest, the features recited in claims 1 and 42.

Cansler '546

Cansler '546 discloses a cosmetic brush 10 including bristles 14 having "gentle waves [that] are **irregular and random in both frequency and amplitude**." Col. 2, lines 47-52. Emphasis supplied. See also, the Abstract at lines 1-5; col. 2, lines 6-9; col. 2, line 68 through col. 3, line 2; col. 3, lines 16-22 and 47-48; and col. 4, lines 35-37. As the Examiner agreed during the interview, Cansler '546 does not disclose "a first periodic pattern [that] repeats regularly along a first applicator element of [a] plurality of

¹ The final Office Action at p. 3, fifth paragraph, mistakenly refers to U.S. Patent No. "5,195,555" rather than "5,161,555." Emphasis added.

applicator elements and a second periodic pattern [that] repeats regularly along a second application element of the plurality of applicator elements, the first periodic pattern being different from the second periodic pattern,” as recited in amended claim 1. In addition, as the Examiner acknowledged during the interview, Cansler ‘546 does not disclose “a first periodic pattern [that] repeats regularly along a first bristle of [a] plurality of bristles and a second periodic pattern [that] repeats regularly along a second bristle of the plurality of bristles, the first periodic pattern being different from the second periodic pattern,” as recited in amended claim 42. Consequently, the Section 102(b) rejection of independent claims 1 and 42, and their respective dependent claims, based on Cansler ‘546 should be withdrawn.

Cansler ‘555

Cansler ‘555 discloses a mascara brush 110 having heavily waved bristles 112 having a wave that may be either uniform or non-uniform. Col. 2, lines 53-65. “[T]he bristles 112 extend outward in a random pattern” from twisted wires 114. Col. 3, lines 3-12. Cansler ‘555 never describes or otherwise discloses a first periodic pattern repeating regularly along a first applicator element/ bristle and a different, second periodic pattern repeating regularly along a second application element/ bristle. Accordingly, as discussed during the interview, Cansler ‘555 does not disclose “a first periodic pattern [that] repeats regularly along a first applicator element of [a] plurality of applicator elements and a second periodic pattern [that] repeats regularly along a second application element of the plurality of applicator elements, the first periodic pattern being different from the second periodic pattern,” as recited in amended claim 1. Further, as discussed during the interview, Cansler ‘555 does not disclose “a first periodic pattern [that] repeats regularly along a first bristle of [a] plurality of bristles and

a second periodic pattern [that] repeats regularly along a second bristle of the plurality of bristles, the first periodic pattern being different from the second periodic pattern,” as recited in amended claim 42. Thus, the Section 102(b) rejection of independent claims 1 and 42, and their respective dependent claims, based on Cansler ‘555 should be withdrawn.

For the reasons set forth above, Applicant respectfully submits that Cansler ‘546 and Cansler ‘555 do not anticipate the subject matter of claims 1 and 42. Thus, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 102(b) rejections based on Cansler ‘546 and Cansler ‘555.

35 U.S.C. § 103(a) Rejections

Claims 10, 11, 19, 21, 27, 29-32, 36, 37, 40, 41, 50, 51, 59, 61, 67, 69-72, 75, 76, 79, and 80 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cansler ‘546 alone or in combination with European Application Publication No. 0651955 (“EP ‘955”). In addition, claims 10, 11, 19, 21, 24, 29-34, 36, 38², 40, 50, 51, 59, 61, 64, 69-75, 77, and 79 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cansler ‘555 alone or in combination with EP ‘955, U.S. Patent No. 6,295,994 to Thayer et al., or U.S. Patent No. 4,403,624 to Montgomery (“Montgomery”).

Applicant notes that these rejected claims depend, either directly or indirectly, from either independent claim 1 or independent claim 42. As discussed above, independent claims 1 and 42 patentably distinguish from Cansler ‘546 and Cansler ‘555.

² In the final Office Action at p. 9, numbered paragraph 17, the rejection statement refers to claim 39 being rejected along with claim 77 under 35 U.S.C. § 103(a). Since the explanation of that rejection refers to subject matter recited in claim 38, rather than claim 39, Applicant assumes that the Examiner intended to reject claim 38, rather than claim 39. If Applicant’s assumption is incorrect, Applicant respectfully requests that the Examiner clarify this matter in his next official communication to Applicant.

Also, none of the cited secondary references supplies the above-noted deficiencies of Cansler '546 and Cansler '555. Therefore, these dependent claims should also patentably distinguish from the cited references at least by virtue of their respective dependencies from independent claims 1 and 42. Thus, Applicant respectfully requests reconsideration and withdrawal of these 35 U.S.C. § 103(a) rejections.

Conclusions

Applicant respectfully requests reconsideration of this application, withdrawal of all of the outstanding rejections, and timely allowance of all pending claims.

If a further discussion with Applicant's attorney would expedite allowance of the application, the Examiner is invited to call Applicant's counsel (571 203 2774).

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically to any statement or characterization in the Office Action, regardless of whether it is addressed above.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 7, 2008

By: 

Anthony M. Gutowski
Reg. No. 38,742